

FEDERAL COMMUNICATIONS COMMISSION
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Ohana Broadcasters Corporation
2234 Aha Niu Place
Honolulu, HI 96821

Re: Ohana Broadcasters Corporation
KXRG-LP, Honolulu, HI
Facility ID No. 132054
File No. BMPL-20081211AEF

Dear Applicant:

This refers to: (1) the above-captioned minor change application to modify operation to 240L1; (2) the July 21, 2009 response to show cause order from Salem Media of Hawaii, Inc. ("Salem"), licensee of KAIM-FM, Honolulu, HI and (3) the July 22, 2009 response to show cause order from Cox Radio, Inc. ("Cox"), licensee of KRTR-FM, Kailua, HI.

On December 11, 2008, Ohana Broadcasters Corporation ("Ohana") filed a minor change application proposing to operate on Channel 240L1 and create a second-adjacent channel short-spacing to KAIM and KRTR pursuant to the second adjacent channel waiver procedures adopted by the Commission in its Third Report and Order in *Creation of a Low Power Radio Service*.¹ By staff letter dated June 22, 2009, Salem and Cox were directed to show cause why the modification of KKJC-LP to operate on Channel 240 and allow a second-adjacent channel short-spacing to KAIM and KRTR is not in the public interest.

On July 21, 2009, Salem filed a Response to Order to Show Cause. Salem states that the Commission has not yet issued regulations with respect to predicted or actual interference resulting from the short spacing of an LPFM on a second-adjacent channel of a full-service station. As described below, all current approved second adjacent waiver request construction permits will be held in pending status and a Special Temporary Authority (STA) will be issued in the interim. This procedure will apply to both pending applications and those filed, but not disposed of, prior to the effective date of any Rule changes proposed in the *Second Further Notice*.

¹ *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21939-40 (2007).

On July 22, 2009, Cox filed an Opposition to Order to Show Cause. Cox states that KXRG-LP's construction permit has expired and that tolling of the permit was not requested. However, prior to the expiration date, KXRG had filed a request to waive the expiration date. This waiver was granted extending the expiration date 6 months from any action taken on this construction permit application.²

The *Third Report and Order* clearly identifies criteria which govern our evaluation of whether the grant of a Section 73.807 waiver request would be in the public interest. It therefore follows that an impacted licensee can challenge whether an LPFM station's proposal has met any or all of these requirements, each of which are discussed in more detail below.

As a threshold matter, an LPFM station will only be eligible for a Section 73.807 waiver grant if it can demonstrate that a full-service proposal would result in: (1) the full-service and LPFM station operating at less than the minimum distance separations set forth in Section 73.807 of the Rules; and (2) increased interference to, or displacement of, the LPFM station. In addition, the LPFM licensee must demonstrate that no alternate, fully-spaced, and Rule-compliant channel is available.

If the LPFM station has satisfied these eligibility requirements, we next consider issues relating to: (1) the potential for new interference to the impacted full-service station, and (2) steps the LPFM station has taken to minimize such interference. As noted in the *Third Report and Order*, the Commission must balance the potential for new interference to the full-service station against the potential loss of the LPFM station. In doing so, we must take into consideration both the geographic size of the area of predicted interference and its population density. Based on desired-to-undesired ("D/U") signal strength calculations, interference in most cases "would be predicted to extend from ten to two hundred meters from the LPFM station antenna." While consideration of the number of listeners potentially subject to interference is crucial to our public interest analysis, we emphasize that the standard is not the same as the FM translator test set forth in Section 74.1203(d) of the Rules.³ In other words, a waiver will not be denied if the impacted licensee can show predicted interference to a single listener. Rather, we consider the overall potential impact on full-service station listeners against the potential displacement of the LPFM station.

We have considered the arguments presented by Salem and Cox and have tentatively concluded that the KXRG-LP application meets the requirements of the Second-Adjacent Channel Waiver Standard and is otherwise acceptable for filing. An engineering analysis has determined that there are no alternate, fully spaced, and rule compliant channels available. Based on desired-to-undesired ("D/U") signal strength ratio calculations, interference is predicted to extend 24 meters from KXRG-LP's site. This predicted interference area is not located near densely populated areas. We therefore conclude that the public interest would be better served by approving the requested modification.

² See *WKVE, Semora, North Carolina*, Memorandum Opinion and Order and Notice of Apparent Liability, 18 FCC Rcd 23411, 23415 (2003) (finding that Media Bureau's waiver of a construction deadline upon a showing of good cause did not exceed its delegated authority)

³ See 47 C.F.R. § 74.1203(d). See also *Living Way Ministries*, Memorandum Opinion and Order, 17 FCC Rcd 17054 (2002) (petition for reconsideration pending).

In accordance with these procedures adopted by the Commission, this letter constitutes approval to operate under special temporary authority ("STA") with the following facilities:

Geographic coordinates:	21° 20' 02" N, 157° 51' 34" W (NAD 1927)
Channel	240 (95.9 MHz)
Effective radiated power:	0.100 kilowatt (H&V)
Antenna height:	
above ground:	6 meters
above mean sea level:	82 meters
above average terrain:	-39 meters

Application BMPL-20081211AEF will be retained in pending status and the request for STA IS HEREBY GRANTED. STAs issued pursuant to these procedures will be subject to any action taken by the Commission in the *Second Further Notice*. The Commission will withhold final determination of the waiver request until action on the *Second Further Notice* proposals.

KXRG-LP must notify the Commission when STA operation has commenced. KXRG -LP must use whatever means are necessary to protect workers and the public from exposure to radio frequency radiation in excess of the Commission's exposure guidelines. See 47 CFR § 1.1310.

This authority expires on **October 29, 2010**.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: Cox Radio, Inc.
Salem Media of Hawaii, Inc.
Robert J. Folliard, III
Robert B. Mesrop Jr.